

REMARKS

Claims 1, 14-16, 19-21 and 27-48 are currently pending in the above-identified application. Claims 1 and 37 have been allowed. Claims 44-47 have been withdrawn by the Examiner as being directed to an invention that is independent or distinct from the invention originally claimed. Claim 27 has been amended to clarify the recited appliances as being geometrically distinct. Support for the amendment is found throughout the specification. As such, no new matter is added by the amendment.

Election/Restriction

The Examiner has alleged that newly submitted claims 44-47 are directed to an invention that is independent or distinct from the invention originally claimed. Although Applicants traverse the restriction for the reasons set forth below, in order to be completely responsive, the restriction of species is acknowledged and Applicants provisionally elect Species 1 as set forth in claims 1, 14-16, 19-21, 27-43 and 48.

First, the restriction of Species I (claims 1, 14-16, 19-21, 27-43 and 48) and Species II (claims 44-47) is traversed because the restriction has inappropriately been made in a Final Action. Restriction is properly made prior to final action (see, MPEP 811), not at Final Office Action since making the restriction while closing prosecution effectively denies the Applicants an opportunity to respond. In the present case, the restriction could have been made at any previous stage of prosecution since claims 44-47, while newly added in Applicants last response, essentially constitute originally filed claims re-written in independent form.

Second, the restriction requirement is additionally traversed because examination of the claims of Species II together with the claims including Species I would present no serious burden on the Examiner or the USPTO. In fact, Applicants point out that the Examiner has already searched and provided an examination of the subject matter of the claims currently being withdrawn. See, e.g., Examiner rejection of previously presented claims 1, 2, and 7-9 in the Office action mailed 1/25/2006. As such, since the subject matter of the restricted claims has already been formally searched and considered, examination of Species II together with Species I

would constitute no undue burden on the Examiner, whereas the division of the claims and the requirement to file a separate application and pursue claims directed to Species II would constitute a waste of U.S. Patent and Trademark Office resources by requiring duplicative searches and examination.

Accordingly, for the reasons set forth above, it is respectfully requested that the division of the claims to Species I and Species II be reconsidered and that the Examiner rejoin and examine claims 44-47 together with elected claims 1, 14-16, 19-21, 27-43 and 48.

Rejections Under 35 U.S.C. §103

Claims 14-16 are rejected under 35 U.S.C. §103(a) as being unpatentable over Chishti *et al.* (U.S. Patent No. 5,975,893) in view of Braverman (U.S. Patent No. 3,780,856).

The cited references, alone or in combination, fail to teach each and every element of the claimed invention, precluding prima facie obviousness. See, e.g., MPEP §§2141-2143. In particular, neither Chishti nor Braverman teaches a non-numerical indicia on a package at an end of the chain indicating a dental appliances to be worn first, as recited in claim 14.

Chishti teaches a system for repositioning teeth comprising a plurality of individual appliances. While Chishti represents a significant advancement in the art, Chishti fails to teach non-numerical indicia on a package at an end of the chain indicating a dental appliance to be worn first, as recited in claim 14.

Applicants disagree with the allegation that the words "after meal" written on the Braverman device (i.e., Fig. 1) teach non-numerical indicia indicating order of use. The Braverman medicinal dispensing device illustrated in Fig. 1 shows a plurality of detachably connected flanges, with two of the flanges labeled "after meal". Where is the non-numerical indicia that indicates which of the two "after meal" flanges (or any of the flanges) are to be used first?

Applicants further disagree with the Examiner's allegation that since all the claimed structure is shown in the cited references, the specific meaning of the indicia is merely a matter of mental interpretation and/or intended use and, therefore, given no patentable weight.

First, as set forth above, the cited references fail to teach "all the claimed structure" because there is no teaching of non-numeric indicia indicating order of use, as recited in claim 14. Second, no reasonable mental interpretation of the phrase "after meal" would impart any meaning or description as to order of use. And there could be no plausible intended use the phrase "after meal" (i.e., the structure of Braverman) in order to indicate order of use of the dental appliances of the claimed invention. Thus, while the device of Braverman includes non-numeric indicia, the cited reference does not teach a non-numerical indicia on a package at an end of the chain indicating a dental appliances to be worn first, as recited in claim 14. Simply citing any non-numeric does not satisfy the specific requirement of the claim.

Accordingly, Applicants respectfully request that the rejections of claims 14-16 under 35 U.S.C. § 103(a) be withdrawn.

Claims 19-21 and 48 are rejected under 35 U.S.C. §103(a) as being unpatentable over Chishti *et al.* (U.S. Patent No. 5,975,893) in view of Klein (U.S. Patent No. 4,038,753).

The cited references, alone or in combination, fail to teach each and every element of the claimed invention, precluding *prima facie* obviousness. In particular, neither Chishti nor Klein teaches a non-numerical indicia designating an order in which each of the plurality of dental appliances are to be worn by a patient to provide dental treatment, as recited in claim 19.

Rather than teaching non-numerical indicia designating order of use, Klein teaches an elastomeric orthodontic article having the term "A-1-REG." written on a central ring. Applicants initially point out that the Examiner has incorrectly cited only a portion ("REG") of the term illustrated in Figure 1 of Klien, whereas the entire term "A-1-REG" includes an indicia that is a combination of numerical and non-numerical symbols, rather than a non-numerical indicia as recited in claim 19. Additionally, the term "A-1-REG" appears to be an indicia designating size of the central ring 12 of article 10 in Figure 1 of Klein. As such, Klein does not teach non-numerical indicia designating order of use, as recited in claim 19.

Applicants also disagree with the Examiner's allegation that since all the claimed structure is shown in the cited references, the specific meaning of the indicia is merely a matter of mental interpretation and/or intended use and, therefore, given no patentable weight. For at least the reasons set forth above, the cited references fail to teach "all the claimed structure" because there is no teaching of non-numeric indicia designating an order of use, as recited in claim 19. Furthermore, no reasonable mental interpretation of the term " A-1-REG ", a combination of numerical and non-numerical indicia apparently indicating central ring size, would include an indication of order of use. Thus, Klein fails to teach non-numerical indicia designating an order in which each of the plurality of dental appliances are to be worn by a patient to provide dental treatment, as recited in claim 19.

Accordingly, Applicants respectfully request that the rejections of claims 19-21 under 35 U.S.C. § 103(a) be withdrawn.

Claims 27-29 are rejected under 35 U.S.C. §103(a) as being unpatentable over Chishti *et al.* (U.S. Patent No. 5,975,893) in view of Klatt (U.S. Published Appl. No. 2003/0136698).

Although Applicants respectfully disagree with the rejection and do not acquiesce to any reasoning provided by the Examiner, claim 27 has been amended to clarify certain differences with the cited references and to further expedite prosecution. The cited references fail to teach or suggest each and every element of the currently claimed invention. In particular, the cited references fail to teach a package including a plurality of geometrically distinct dental appliances positioned in an arrangement within the package which indicates an order of usage, as recited in current claim 27.

Rather than teaching a package including a plurality of geometrically distinct dental appliances, Klatt teaches a stack of blister cards in a package with a numerical indication the number of days left in a drug treatment regime (see, e.g., Figures 1-3 of Klatt). Klatt makes no distinction between the individual blister cards, which all appear to be identical to each other. No particular stacking order or arrangement of the blister cards is taught by Klatt since the focus

of Klatt is on the length of treatment and drug regime duration. Thus, Klatt fails to teach geometrically distinct dental appliances, or a stack of articles where the individual articles are distinct in any way, and fails to teach or suggest distinct appliances positioned in an arrangement within the package which indicates an order of usage, as recited in current claim 27.

Accordingly, Applicants respectfully request that the rejections of claims 27-29 under 35 U.S.C. § 103(a) be withdrawn.

Claim 30 is rejected under 35 U.S.C. §103(a) as being unpatentable over Chishti *et al.* (U.S. Patent No. 5,975,893) in view of Baggett (U.S. Patent No. 4,811,845).

The cited references fail to teach each and every element of the claimed invention. In particular, the references, alone or in combination, fail to teach a plurality of packages wherein each package includes a label having a non-numeric indicia indication the order of usage of the corresponding dental appliance, as recited in claim 30.

Baggett teaches use of a combination of numeric and non-numeric indicia (e.g., time, date, day of the week, etc.) for ensuring that a patient receives accurate doses of required medication at scheduled times. Baggett does not teach using non-numeric indicia alone to communicate information necessary to convey order of use. For example, merely stating a day of the week, without more, does not indicate order of use for a treatment regime greater than 7 days. Furthermore, Baggett does not teach modifying the medication dosage procedures for a different field of use (e.g., orthodontics). As such, the references fail to teach each package of a plurality including a label having a non-numeric indicia indication the order of usage of the corresponding dental appliance, as recited in claim 30.

Accordingly, Applicants respectfully request that the rejection of claims 30 under 35 U.S.C. § 103(a) be withdrawn.

Claims 30 and 31 are rejected under 35 U.S.C. §103(a) as being unpatentable over Chishti *et al.* (U.S. Patent No. 5,975,893) in view of Seidl (DE 3925088).

The cited references fail to teach each and every element of the claimed invention. In particular, the references, alone or in combination, fail to teach a label that includes a series of numbers and the non-numeric indicia comprises a marking on one of the numbers, wherein the marking indicates order of usage of the corresponding dental appliance, as recited in claim 31.

Seidl shows price labels with strike-through marks through a first price number to show that the goods are being sold at a reduced price. The combination of numeric and non-numeric indicia communicates information of price reduction. Seidl does not show any non-numeric indicia that indicates order of usage. In the present instance, it is not sufficient to establish a *prima facie* case of obviousness merely by citing any non-numeric indicia and ignoring 1) the information communicated in the cited reference and 2) claim language in the present application that requires non-numeric indicia indicate the order of usage. The indicia of Seidel does not communicate the information required by the claim. Thus, while Seidl teaches non-numeric strike-through text of a numeric price indicia, Seidl fails to teach any non-numeric indicia indicating order of usage of the corresponding dental appliance, as recited in claim 31.

Accordingly, Applicants respectfully request that the rejection of claims 30 and 31 under 35 U.S.C. § 103(a) be withdrawn.

Claims 30, 32 and 33 are rejected under 35 U.S.C. §103(a) as being unpatentable over Chishti *et al.* (U.S. Patent No. 5,975,893) in view of Fuller.

The cited references fail to teach each and every element of the claimed invention. In particular, the references, alone or in combination, fail to teach a label that includes a series of numbers and the non-numeric indicia comprises a removal of one of the numbers, wherein the removal indicates order of usage of the corresponding dental appliance, as recited in claims 30, 32, and 33.

Fuller teaches removal of numbers from a record sheet and receipt embodying items entered thereon in connection with the stay of a guest at a hotel. The removal taught in Fuller, however, does not indicate any order of usage of anything. Simply teaching removal of numbers is insufficient to establish *prima facie* obviousness, since the removal taught by Fuller

does not communicate the information required by the claims. The cited references fail to teach number removal, where removal indicates order of usage of the corresponding dental appliance, as recited in claim 32.

Accordingly, Applicants respectfully request that the rejection of claims 30, 32, and 33 under 35 U.S.C. § 103(a) be withdrawn.

Claims 30 and 34-36 are rejected under 35 U.S.C. §103(a) as being unpatentable over Chishti *et al.* (U.S. Patent No. 5,975,893) in view of Morris *et al.* (U.S. Patent No. 4,726,970).

The cited references fail to teach each and every element of the claimed invention. In particular, the references, alone or in combination, fail to teach non-numeric indicia comprising a shape that indicates order of usage of the corresponding dental appliance, as recited in claim 34-36.

Morrish teaches a package including a bar code printing 35 in Figure 4, but Morrish does not teach a bar code or any shape that indicates or otherwise communicates information regarding an order of usage. Simply teaching a shape communicating any information is insufficient to establish *prima facie* obviousness, since the shape/bar code taught by Morrish does not communicate the information required by the claims. Thus, the cited references fail to teach a shape that indicates order of usage of the corresponding dental appliance, as recited in claim 34-36.

Accordingly, Applicants respectfully request that the rejection of claims 34-36 under 35 U.S.C. § 103(a) be withdrawn.

Claims 38 and 39 are rejected under 35 U.S.C. §103(a) as being unpatentable over Chishti *et al.* (U.S. Patent No. 5,975,893) in view of Wong *et al.* (U.S. Patent No. 6,206,695) and Rohlcke *et al.* (U.S. Patent No. 5,326,259).

The cited references fail to teach each and every element of the claimed invention. In particular, the references, alone or in combination, fail to teach non-numeric indicia

comprising one or more cutouts so that each polymeric shell has a different cutout pattern, as recited in claim 38.

Wong teaches orthodontic reamers with colored handles, where the color scheme is designed and used to more easily distinguish the differently sized endodontic reamers, not in prescribing a specific order of use of the tools. Wong does not teach color or any non-numeric indicia to indicate order of use. Rohlcke teaches marking metal orthodontic brackets to identify their orientation (e.g., top side, bottom side) when attached to individual teeth. While Rohlcke teaches that the markings may be colored (e.g., to aid visualization) there is no marking or indicia taught as to order of use and no logical connection between the teachings of Rohlcke (e.g., markings for bracket orientation) and Wong (e.g., color to indicate reamer size). Neither reference teaches color or any non-numeric indicia whatsoever to indicate order of use of anything. Thus, the cited references fail to teach non-numeric indicia comprising one or more cutouts so that each polymeric shell has a different cutout pattern, as recited in claim 38.

Accordingly, Applicants respectfully request that the rejection of claims 38 and 39 under 35 U.S.C. § 103(a) be withdrawn.

Claims 40 and 41 are rejected under 35 U.S.C. §103(a) as being unpatentable over Chishti *et al.* (U.S. Patent No. 5,975,893) in view of Wong *et al.* (U.S. Patent No. 6,206,695) and Martin (U.S. Patent No. 6,884,071).

The cited references fail to teach each and every element of the claimed invention. In particular, the references, alone or in combination, fail to teach non-numeric indicia designating order of use, where the non-numeric indicia comprises a computer readable element, as recited in claim 40.

As set forth above, Wong fails to teach color or any non-numeric indicia to indicate order of use. Martin teaches using non-numeric indicia such as electronically legible codings (bar codes) as containing information about the mixing time, the material, the manufacturer and/or the expiration date (see, Marin at col. 7, lines 28-29). Martin fails to teach non-numeric indicia to designate order of use. Neither Wong nor Marin teaches use of non-

numeric indicia that communicates the information recited in the claims - i.e., order of use. As such, the cited references fail to teach each and every element of the claimed invention, thereby precluding *prima facie* obviousness.

Accordingly, Applicants respectfully request that the rejection of claims 40 and 41 under 35 U.S.C. § 103(a) be withdrawn.

Claims 42 and 43 are rejected under 35 U.S.C. §103(a) as being unpatentable over Chishti *et al.* (U.S. Patent No. 5,975,893) in view of Wong *et al.* (U.S. Patent No. 6,206,695) and Martin (U.S. Patent No. 6,884,071) as applied to claim 40 above, and further in view of Morris *et al.* (U.S. Patent No. 5,923,001).

The combination of Chishti, Wong, and Martin as applied to claim 40 is overcome for at least the reasons set forth above. While Morris (which is non-analogous art) teaches radio frequency identification tags, Morris fails to teach using such tags, or any other indicia, to identify order of use. As such, Morris fails to provide the teachings that are missing from Chishti, Wong, and Martin and, therefore, the cited references, either alone or in combination, fail to teach each and every element of the claimed invention.

Accordingly, Applicants respectfully request that the rejection of claims 42 and 43 under 35 U.S.C. § 103(a) be withdrawn.

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PATENT

CONCLUSION

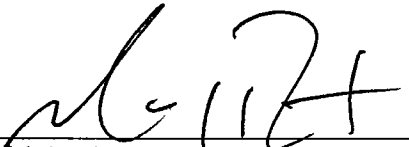
In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance and an action to that end is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 206-467-9600.

Respectfully submitted,

Date: _____

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Michael T. Rosato
Reg. No. 52,182

TOWNSEND and TOWNSEND and CREW LLP
Two Embarcadero Center, Eighth Floor
San Francisco, California 94111-3834
Tel: 206-467-9600
Fax: 415-576-0300
MTR:jms
60895941 v2